Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
New Verizon Petition Requesting Forbearance	)	
From Application of Section 271	)	CC Docket No. 01-338
	)	

OPPOSITION OF MCI TO VERIZON'S PETITION FOR FORBEARANCE

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WorldCom, Inc. ("MCI") hereby submits this Opposition to the petition for forbearance (the "Petition") filed by Verizon in the above-referenced proceeding.

I. INTRODUCTION AND SUMMARY

In its Petition, Verizon asks the Commission, pursuant to section 10 of the Communications Act of 1934, as amended (the "Act"),[1] to forbear from applying the access requirements of section 271 to those "broadband elements" that the FCC has determined the Bell Operating Companies ("BOCs") are no longer required to unbundle pursuant to section 251(c)(3). Verizon's principal claim in support of its request for forbearance is that in the *UNE Triennial Review Order*[2] the Commission intended to exclude broadband loops from the independent access obligation of section 271. As

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1 47 U.S.C. § 160.

2 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, *as modified by* Errata, 18 FCC Rcd 19020 (2003) ("*UNE Triennial Review Order*").

discussed below, there is no support for this claim. The FCC unequivocally confirmed in the *UNE Triennial Review Order* that the BOCs have an independent obligation to provide access to section 271 checklist items, including loops, without regard to the requirements of section 251(c)(3) or the technology used to provide the loop. Section 251 applies to all incumbent LECs, whereas section 271 applies only to BOCs. Therefore, the FCC's determination that the BOCs have an independent obligation to provide access to checklist items under section 271 is entirely consistent with its finding that incumbent LECs are no longer required to provide unbundled access to those same elements under section 251. In enacting the "special provisions" of section 271, Congress determined that the unique nature of the BOCs' control over the local exchange market requires additional protections in the form of section 271's independent access obligation.

Verizon also argues that enforcement of the section 271 access requirement would require modifications to its network, and ordering and billing systems, imposing additional costs on Verizon and undermining its incentives to invest in broadband facilities. In fact, over a year ago in its PARTS tariff, Verizon proposed to provide precisely the type of bitstream access that section 271 requires. Moreover, in the *UNE Triennial Review Order*, the Commission explicitly contemplated that incumbent LECs would provide wholesale service offerings for access to fiber feeder plant to ensure that competitive local exchange carriers would have access to copper subloops.

In short, Verizon has not met the statutory test for forbearance under section 10(a) of the Act. Consistent with Commission precedent, the requested relief must be denied.

Even if Verizon had met the requirements of section 10(a) (which it has not), its Petition is barred by section 10(d) of the Act. Section 10(d) precludes the Commission from forbearing from applying the requirements of section 271 until those requirements have been "fully implemented."[3] Verizon's failure to demonstrate that those requirements have been fully implemented is fatal to its Petition.

Verizon also argues that section 271 does not apply to network facilities used to provide broadband services. In fact, the FCC has previously held that the procompetitive provisions of the 1996 Act, including section 271, apply to advanced services. The plain language of section 271 and past federal court and Commission precedent, including the very section 271 orders upon which Verizon relies, make clear that the checklist applies broadly to all types of loops and switching, including facilities used to provide broadband services. Verizon provides neither a legal nor a factual basis for the Commission to interpret section 271 to exclude these facilities, and the Commission should decline to do so.

II. DISCUSSION

A. Verizon Has Failed to Make the Necessary Showing Required for Forbearance Under Section 10

Verizon's Petition fails to meet the demanding standard of section 10(a), and in fact, grant of the Petition would undermine local competition greatly, preventing consumers and businesses from realizing the benefits of that competition, including lower prices and greater innovation. Even if that were not the case, as explained below, Verizon has failed to demonstrate that the requirements of section 271 have been fully implemented, as required by section 10(d).

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[3] 47 U.S.C. § 160(d).

1. Grant of the Verizon Petition Would Be Inconsistent with Section 10(a)

In order to satisfy the requirements of section 10(a), Verizon must demonstrate that access to checklist items under section 271 is: (1) not necessary to ensure that the charges and practices for those elements are just and reasonable; (2) not needed to protect consumers; and (3) consistent with the public interest.[4] The Commission must deny a petition if it finds that "any one of the three prongs is unsatisfied."[5] In addition, when determining whether forbearance is consistent with the public interest under section 10(a)(3), section 10(b) requires the FCC to consider whether the requested relief will "promote competitive market conditions."[6] As shown below, Verizon fails to demonstrate that it satisfies section 10(a).

a. Verizon's Petition Does Not Meet Section 10(a)'s Statutory Test for Forbearance

Verizon's principal argument in support of its request for relief is that the FCC could not have intended in the *UNE Triennial Review Order* to require the BOCs to offer access to fiber and hybrid fiber loops pursuant to section 271 because the FCC had just concluded in an earlier section of the same order that requiring the BOCs to unbundle the broadband capabilities of those elements pursuant to section 251(c)(3) would deter investment in next-generation broadband networks.[7] Given this "present uncertainty,"

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4 47 U.S.C. § 160(a).

5 *CTIA v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003).

6 47 U.S.C. § 160(b).

7 *See* "The Commission Should Forbear From Imposing Any Section 271 Unbundling Obligations On Broadband," at 5-7 ("Petition"), attached to *Ex Parte* Letter from Susanne A. Guyer, Verizon, to Chairman Powell, *et al.*, FCC, CC Docket No. 01-338 (Oct. 24, 2003) ("Verizon Letter"). Verizon defines "broadband elements" to

Verizon urges the FCC to clarify that the BOCs do not have a "stand-alone obligation" to provide access to broadband elements under section 271.[8]

Contrary to Verizon's claims, no such uncertainty exists. The Commission unequivocally concluded in the *UNE Triennial Review Order* that the Act establishes an "independent and ongoing access obligation" for the BOCs to provide access to checklist items under section 271(c)(2)(B) that is separate and distinct from an incumbent LEC's unbundling duties under section 251.[9] In reaching this conclusion, the Commission expressly ruled that under section 271's competitive checklist, the BOCs must continue to "provide access to loops, switching, transport, and signaling *regardless of any unbundling analysis under section 251*."[10] And the *UNE Triennial Review Order* clearly contemplated that an element that is exempted from unbundling under section 251 would still be available under section 271: "[w]here there is no impairment under section 251 and a network element is no longer subject to unbundling, we look to section 271 and elsewhere in the Act to determine the proper standard for evaluating the terms,

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include "fiber-to-the-premises loops, the packet-switched features, functions and capabilities of hybrid loops, and packet switching." *See* Verizon Letter at 1.

8 Petition at 2.

9 *UNE Triennial Review Order* ¶ 654. This ruling was consistent with the *UNE Remand Order*, in which the FCC similarly concluded that section 271 created an independent unbundling obligation separate from that imposed under section 251. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 471 (1999) ("*UNE Remand Order*"). For purposes of this pleading, MCI takes the decisions made in the *UNE Triennial Review Order* as a given. However, MCI's reliance on that order should not be interpreted as agreement with the FCC's analysis.

10 *UNE Triennial Review Order* ¶ 653 (emphasis added).

conditions, and pricing under which a BOC must provide the checklist network elements."[11]

The Commission's analysis of this issue is sound and comports fully with Supreme Court precedent. As highlighted in the *UNE Triennial Review Order*, while checklist item number 2 explicitly cross-references section 251, checklist items 4, 5, 6 and 10 "separately impose access requirements regarding loop, transport, switching, and signaling, *without mentioning section 251*."[12] In order "to give effect, if possible, to every clause and word of a statute,"[13] the FCC concluded that there is no link between checklist items 4, 5, 6 and 10 and section 251.[14] Any action by the Commission with respect to an incumbent LEC's obligation to unbundle access to broadband facilities under section 251 therefore does not affect a BOC's unbundling obligation with respect to those network elements pursuant to section 271. Despite Verizon's arguments to the contrary, "[t]he short answer is that Congress did not write the statute that way."[15]

Verizon's claim that its obligation to offer unbundled access to broadband under section 271 somehow "compromise[s]" the Commission's decisions affecting broadband under section 251(c) is similarly misguided.[16] Verizon's view apparently is that the

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11 *Id.* ¶ 656.

12 *Id.* ¶ 654 (emphasis added). For example, checklist item 2 states in its entirety that BOCs must allow for "(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(ii). By contrast, checklist item 4 in its entirety mandates access to "(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services." 47 U.S.C. § 271(c)(2)(B)(iv).

13 *United States v. Menasche*, 348 U.S. 528, 538-39 (1955).

14 *UNE Triennial Review Order* ¶ 654.

15 *Russello v. United States*, 464 U.S. 16, 23 (1983).

16 *See* Petition at 1, 5-7.

Commission intended in the *UNE Triennial Review Order* to eliminate any incumbent LEC obligation to provide wholesale access to broadband, and consequently, Verizon should be relieved of its obligation under section 271 to do so. In fact, the plain text of the order refutes this baseless claim.

Contrary to Verizon's suggestion, the *UNE Triennial Review Order* expressly contemplated that, after modifying the section 251(c) unbundling obligations with respect to fiber subloops, incumbent LECs would make broadband service offerings available on a wholesale basis on just, reasonable and nondiscriminatory terms and conditions:

> we expect that incumbent LECs will develop wholesale service offerings for access to their fiber feeder to ensure that competitive LECs have access to copper subloops. Of course, the terms and conditions of such access would be subject to sections 201 and 202 of the Act.[17]

Thus, the Commission clearly saw no inconsistency between its determinations regarding the unbundling of fiber network elements under section 251 and the incumbent LECs' provision of broadband access in accordance with the requirements of sections 201 and 202. Similarly, the FCC's section 251 unbundling conclusions plainly are not "compromised" by the BOCs' continuing obligation to offer access to broadband pursuant to section 271, subject to the requirements of sections 201 and 202 that rates, terms, and conditions be just, reasonable and not unreasonably discriminatory.[18]

Indeed, the FCC's determination that competitors are not impaired without access to certain network elements from incumbent LECs under section 251 is entirely consistent with a conclusion that continued access to those same elements from the BOCs

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[17] *UNE Triennial Review Order* ¶ 253. In so stating, the FCC expressly indicated that Verizon itself supported making available such wholesale broadband offerings. *Id.* ¶ 253 n.755.

[18] 47 U.S.C. §§ 201-202.

is required under section 271. In enacting the "special provisions" of sections 271-272,[19] Congress explicitly determined that additional safeguards were necessary to ensure that the BOCs, after obtaining authority to offer in-region interLATA services under section 271, would not be able to use their monopoly power over local facilities to erode competition for interLATA services. As the U.S. Court of Appeals for the D.C. Circuit has explained, Congress imposed these added safeguards "due to the unique infrastructure controlled by the BOCs" and their special ability to "exercise monopoly power."[20] As the court reiterated, "[b]ecause the BOCs' facilities are generally less dispersed than [those of other incumbent LECs], they can exercise bottleneck control over both ends of a telephone call in a higher fraction of cases than can [other incumbent LECs]."[21] Moreover, at the time of the court's decision, the BOCs provided the vast majority of local telephone service in the United States,[22] and they continue to do so today.[23] In comparison, section 251's unbundling duties apply to incumbent LECs in general, a category that is comprised of "[s]everal hundred other carriers [that] provide

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19 47 U.S.C. §§ 271-272; *see also id.* §§ 273-276 (adopting additional "special provisions" applicable only to the BOCs).

20 *See BellSouth Corp. v. FCC*, 162 F.3d 678, 689-90 (D.C. Cir. 1998); *see also id.* at 691 ("Congress clearly had a rational basis for singling out the BOCs [for special treatment], *i.e.*, the unique nature of their control over their local exchange areas.").

21 *BellSouth Corp. v. FCC*, 144 F.3d 58 (D.C. Cir. 1998); 162 F.3d at 689.

22 "The seven BOCs provide over 80% of local telephone service in the United States." *BellSouth v. FCC*, 162 F.3d at 689. Those seven BOCs since have merged into four entities that control even larger geographic regions than their predecessors. This fact further counsels against the Commission forbearing from enforcing section 271's requirements.

23 *UNE Triennial Review Order* ¶ 660 (BOCs control 85.9 percent of incumbent LEC local switched access lines); *Local Telephone Competition: Status as of December 31, 2002*, Table 1 (June 2003), *available at*: <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0603.pdf> (incumbent LECs serve 86.8 percent of all switched access lines).

the balance of local service" in the U.S.[24] Accordingly, it was entirely proper for Congress to determine that the unique nature of the BOCs' control over the local exchange market required additional protections in the form of section 271's independent access obligation. Verizon's Petition omits any discussion of the special protections afforded by 271, and instead attempts to eliminate those requirements through the back door of section 10(a), in contravention of the plain language of the Act and the FCC's recent decision affirming these independent obligations.

As the FCC has recognized, "the fundamental objective of the 1996 Act is to bring consumers of telecommunications services in all markets the full benefits of competition."[25] Yet, Verizon's pleading nowhere mentions the effect of the requested forbearance on competition, as the Commission is required to consider under section 10(b).[26] Where, as here, a carrier possesses market power through its control over bottleneck facilities, government regulation that provides for access to those facilities is necessary to protect consumers and competitors from the exercise of that market power, and to ensure that the public interest is served. In the *UNE Triennial Review Order*, the FCC modified certain unbundling obligations with respect to hybrid fiber-copper loops predicated upon the expectation that incumbent LECs would provide wholesale access in a manner that ensures competitors could access copper subloops.[27] Without this

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24 *BellSouth v. FCC*, 162 F.3d at 689.

25 *See Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, Memorandum Opinion and Order, 14 FCC Rcd 16252, ¶ 46 (1999) ("*NDA Order*").

26 47 U.S.C. § 160(b).

27 *See* discussion *supra* at 6-7 & n.17.

wholesale access, competitive carriers would be unable to access copper subloops – network elements for which there are indisputably no alternatives.[28]

Verizon's Petition, however, seeks to eliminate its duty under section 271 to provide such access, notwithstanding Commission precedent in analogous situations, in which the FCC repeatedly declined to forbear from access requirements. In the context of nonlocal directory assistance, for example, the FCC concluded that the BOCs had a competitive advantage that stemmed from their local monopolies with regard to in-region directory listings, and that, absent nondiscriminatory access to those listings, none of the requirements of section 10(a) could be met.[29] Similarly, the FCC declined to forbear from the depreciation prescription process, finding that, where forbearance would likely raise prices for bottleneck facilities, the Commission cannot find that forbearance would promote competitive market conditions.[30] The Commission has also declined to forbear in circumstances in which forbearance would "bestow[] an enormous competitive

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28 *See UNE Triennial Review Order* ¶ 253.

29 *See NDA Order* ¶¶ 35-37 ("Given that U S WEST's competitive advantages in the provision of regionwide directory assistance service *stem from its local exchange and exchange access monopolies*, we find that any discrimination between U S WEST and unaffiliated entities with respect to in-region telephone numbers would be unjust and unreasonable within the meaning of section 10(a)(1).") (emphasis added), ¶¶ 46-47 (relying on continued nondiscriminatory access to find that enforcement of the separate affiliate safeguards of section 272 was not necessary to protect consumers), ¶ 53 ("In evaluating whether forbearance is consistent with the public interest, we take into account the competitive harms caused by U S WEST's *monopoly control* over the in-region telephone numbers. . . . because of U S WEST's *dominance in the local market*, it has the ability to charge rates for directory listing information that may make it difficult for competing providers of nonlocal directory assistance service to succeed in the market and, at the same time, give U S WEST a competitive advantage.") (emphasis added).

30 *See 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, Report and Order, 15 FCC Rcd 242, ¶ 63 (1999).

advantage" on certain carriers.[31] Verizon's request for forbearance from the independent access obligations of section 271, similarly, would impermissibly and "unreasonably deprive other telecommunications carriers [of] the opportunity to compete for a customer's business,"[32] thereby denying consumers the public interest benefits of customer choice, lower prices, and greater innovation.

Rather than address the effect of the requested forbearance on local competition, Verizon instead attempts to rely on section 706 of the Act, which Verizon claims "all but compels forbearance" from any obligation to provide access to elements used to provide broadband under section 271 when unbundling is not required under section 251.[33] To the contrary, section 706 is irrelevant to the scope of a BOC's access obligations under section 271 and cannot be used to limit the 271 checklist. In the *UNE Triennial Review Order*, the Commission found that section 706 was relevant to its unbundling analysis under section 251 only because the "at a minimum" clause of section 251(d)(2) granted the FCC authority "to take Congress's goals into account" in deciding which network elements must be unbundled.[34] Section 271, however, does not contain an "at a minimum" clause; in fact, it expressly prohibits the Commission from "limit[ing] or extend[ing] the terms used in the competitive checklist set forth in subsection

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[31] *Implementation of the Telecommunications Act of 1996*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, ¶ 29 (1999) ("*CPNI Order*") (denying a request for forbearance from the CPNI requirements); *see also Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band*, Third Order on Reconsideration, 13 FCC Rcd 4856, ¶ 109 (1998) (section 10 "recognizes the need to reduce market power by encouraging competitive entry into communications markets").

[32] *CPNI Order* ¶ 29.

[33] Petition at 8.

[34] *UNE Triennial Review Order* ¶ 176.

(c)(2)(B)."[35] Consequently, the Commission may not rely on section 706 to limit the terms of the competitive checklist.[36]

Consistent with Commission precedent in this area, Verizon's Petition must be rejected for failure to show that the requested relief meets the demanding standard of section 10(a).

b. *Section 271 Unbundling Requirements Do Not Impose Any Burdens That Would Justify Forbearance*

Verizon also argues that enforcement of the section 271 access requirement would impose network redesign costs on Verizon and undermine its incentives to invest in broadband facilities, creating further regulatory uncertainty. Verizon's arguments that section 271's unbundling requirements improperly burden Verizon and the other BOCs are meritless.

Feasibility of Access Pursuant to Section 271. Section 271(c)(2)(B)(iv) requires Verizon to provide competitive carriers with unbundled access to local loop transmission from a central office to a customer's premises.[37] As discussed in more detail below, this obligation applies equally to packet-switched and circuit-switched transmission.[38]

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35 47 U.S.C. § 271(d)(4).

36 MCI disagrees with the Commission's decision in the *UNE Triennial Review Order* to rely on section 706 and the "at a minimum" language in section 251(d)(2) to restrict access to bottleneck loop facilities simply because they include fiber in the loop. Nonetheless, even if that interpretation were permissible under section 251, it is clearly prohibited under section 271.

37 47 U.S.C. § 271(c)(2)(B)(iv).

38 *See, e.g., Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, ¶ 268 (1999) ("*New York 271 Order*") (the loop definition under section 271 "includes different types of loops, including . . . 'loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL and DS1-level signals.'"); *Application by Qwest Communications*

Verizon asks the FCC to forbear from enforcing section 271's access requirements with respect to what it refers to as "broadband elements" or "components of [Verizon's] next-generation network architecture,"[39] and argues that requiring access to such architecture would require a "costly redesign of the network."[40] In truth, however, the statutory obligation to provide access to Verizon's "broadband network" imposes no undue hardship.

As an initial matter, unbundled access pursuant to section 271 does not require Verizon to break its network into its constituent parts as Verizon seems to suggest.[41] Rather, unbundled access simply requires that the transmission be priced separately, and imposes no "redesign" requirements.[42] Verizon sets up a straw man description of its obligations that bears little relationship to the way in which access would actually be provided. For example, Verizon claims it would have to redesign its network and deploy additional equipment in order to provide competitors access to next-generation digital loop carrier ("NGDLC") loops.[43] Yet, over a year ago, Verizon was willing to provide competing carriers access to such transmission services as part of its Packet at the

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International, Inc., 17 FCC Rcd 26303, ¶ 335 (2002) ("*Qwest Nine-State Order*"); *Joint Application by SBC Communications, Inc., et al. to Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719, ¶ 97 (2001) ("*Arkansas/Missouri 271 Order*").

39 Petition at 2, 10.

40 *Id.* at 10.

41 *See, e.g., id.* at 9 (discussing obligations to "provide access separately to the various components" of Verizon's network); *id.* at 10 ("To have a single device that could serve as an 'unbundled' switching element, the incumbent would have to redesign the network").

42 *Verizon Communications Inc. v. FCC*, 525 U.S. 467, 531 (2002) ("To provide a network element 'on an unbundled basis' is to lease the element, however described, to a requesting carrier at a stated price specific to that element.").

43 Petition at 10.

Remote Terminal Service ("PARTS").[44] Although the rates, terms and conditions of Verizon's proposed PARTS tariff were problematic,[45] the tariff demonstrates that Verizon is already capable of providing the type of unbundled access that MCI is seeking – *i.e.,* a bitstream handoff at the central office, or some other point in the network.[46] Moreover, as Verizon proposed in its PARTS tariff, access to a bitstream handoff should be available over stand-alone loop facilities as well as over the same UNE loop facility the competitive LEC is using to provide voice to the end-user customer, including a UNE-P arrangement.[47]

Similarly, Verizon's complaints about the costs and difficulty of modifying its network, and ordering and billing systems to accommodate unbundled access are not credible, given its earlier submissions in the New York DSL collaborative, in which Verizon explained how ordering and loop qualification would work for PARTS.[48] Clearly, any necessary modifications have already been implemented, and thus cannot form a basis for granting forbearance.

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44 *See Verizon Telephone Cos. Tariffs F.C.C. Nos. 1 and 11, Transmittal No. 232* (Aug. 9, 2002); *see also UNE Triennial Review Order* ¶ 253 & n.755 (noting FCC's expectation that incumbent LECs would make available wholesale service offerings). Verizon had stated that it planned to roll out its PARTS offering in September 2002.

45 *See* WorldCom Petition to Reject or, in the Alternative, Suspend and Investigate, Transmittal No. 232 (Aug. 16, 2002) (describing many of the problems with Verizon's PARTS tariff).

46 Verizon, "Packet at the Remote Terminal Service (PARTS) Presentation to the NY DSL Collaborative" at 3 (Aug. 28, 2002) (appended as Attachment 1) ("8/28 Presentation to the NY DSL Collaborative") (explaining that PARTS is a DSL-based service that relies on packet switching to provide a "virtual data channel between the end user's rate demarcation point and a Customer's collocation arrangement located in the end user's serving wire center.").

47 *See* 8/28 Presentation to the NY DSL Collaborative at 5 (showing how PARTS can be delivered over a UNE loop).

48 *See* 8/28 Presentation to the NY DSL Collaborative at 7-8.

Investment. Verizon also argues that forbearance is particularly appropriate for elements used to provide broadband services because of the enormous fixed costs of investment for these elements.[49] This argument ignores several facts. First, all telecommunications networks are capital intensive, whether used for broadband or narrowband. The record in the *UNE Triennial Review* proceeding, moreover, demonstrates that deploying fiber can be a cost-effective strategy.[50] For example, SBC has long touted the large annual savings it will achieve by deploying its Project Pronto NGDLC platform.[51] In addition, deploying NGDLC systems allows the BOCs to extend the reach of their DSL service significantly, thereby expanding their subscriber base and increasing their revenue opportunities.[52]

Regulatory Uncertainty. Finally, Verizon resorts to pleas for regulatory certainty to justify its request for forbearance.[53] There is no uncertainty, however. Section 271

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49 Verizon also claims that "[t]he D.C. Circuit [in *USTA*] has made clear that section 251(d)(2) embodies a congressional policy judgment that 'unbundling is not an unqualified good.'" Petition at 9 (citing *USTA v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002)). Verizon's reliance on *USTA* is undercut by the Supreme Court's decision in the *Verizon* case. There, the Court concluded that, under the Commission's unbundling rules, new entrants had "invested in new facilities to the tune of $55 billion since the passage of the Act (through 2000)." *Verizon v. FCC*, 535 U.S. at 516. Thus, the Court found that the incumbent's claims that the FCC rules had somehow deterred competitive investment could not be squared with such "substantial competitive capital spending over a 4-year period." *Id.* at 517.

50 *See, e.g.*, Letter from Kimberly Scardino to Marlene Dortch, CC Docket No. 01-338, at 4-5 (Oct. 31, 2002) ("October Letter"); Joint Declaration of Tom Stumbaugh, David Reilly, and William Drake, ¶¶ 13-16, attached to WorldCom Reply Comments, CC Docket No. 01-338 (July 17, 2003) ("MCI Reply Comments").

51 *See* October Letter at 4.

52 *See* October Letter at 5. To the extent Verizon can make the showing that broadband investment is riskier than narrowband investment, and that its cost of capital is greater than it would be without the broadband investment, Verizon can seek to recover this increased cost of capital through its rates.

53 Petition at 2, 11.

plainly requires Verizon to provide requesting carriers with unbundled access to loops, switches, transport and signaling. These obligations have been in place since Verizon first received approval for its section 271 applications. To the extent any uncertainty exists, it is solely the product of Verizon's unrelenting requests to be relieved of its unbundling obligations.

2. Verizon's Petition is Barred By Section 10(d) of the Act

Even if Verizon had shown that it has satisfied section 10(a) (which it has not), section 10(d) bars the requested relief. Section 10(d) of the Act states in relevant part that:

> the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.[54]

According to Verizon, "the Commission has already found, in approving section 271 applications for 49 states and the District of Columbia, that the Bell companies have in fact 'fully implemented the competitive checklist.'"[55] As support for that claim, Verizon relies on a provision of section 271 that requires the Commission to find that a BOC "has fully implemented *the competitive checklist* in [section 271(c)(2)(B)]" in order to grant an application for in-region interLATA authority in a particular state.[56] Verizon's argument confuses the showing required to gain in-region interLATA authority with the showing required to satisfy section 10(d).

Contrary to Verizon's claims, the statute does not permit the FCC to forbear from enforcing the requirements of 271 as soon as a BOC has received interLATA authority.

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54 47 U.S.C. § 160(d).

55 Petition at 3.

56 *See id.* (citing 47 U.S.C. § 271(d)(3)(A)(i)) (emphasis added).

Section 271(d)(3)(A)(i) relates to the checklist being "fully implemented," while section 10(d) relates to the requirements of section 271 being "fully implemented." Full implementation of the competitive checklist – one component of section 271 – is not the same as full implementation of section 271 as a whole. Accordingly, the Act prohibits the Commission from forbearing from any section 271 requirement until the BOC has fully implemented *all* of the requirements of section 271, not just those requirements included in the competitive checklist.

This reading of section 10(d) is consistent with the structure and purpose of the Act's local competition provisions. As the Commission has concluded, section 271 requires a BOC seeking to obtain in-region interLATA authority to show that it has *opened* its local markets to competitive entry.[57] But Congress did not require the BOCs to open their markets only to permit the BOCs immediately to close them again. Instead, Congress recognized that even after a BOC had satisfied the 271 checklist requirements and obtained in-region interLATA authority, it would continue to be dominant in local telecommunications markets.[58] Congress thus imposed on the Commission an ongoing obligation to ensure that a BOC continues to comply with the conditions it is required to satisfy in order to obtain section 271 approval.[59]

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57 *See, e.g., Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶¶ 1, 419 (2000) ("*Texas 271 Order*"); *New York 271 Order* ¶¶ 1, 15, 426, 428.

58 "The competitive checklist . . . only ensures that certain technical and legal barriers to competition . . . have been eliminated prior to the RBOC entry. This checklist does not require that competition actually exist in local markets dominated by the RBOCs before they are able to use their substantial market power to enter long distance markets." 141 Cong. Rec. S. 8460, 8470 (1995) (statement of Sen. Feingold).

59 *See* 47 U.S.C. § 271(d)(6); *Texas 271 Order* ¶ 434 (noting that "Section 271 approval is not the end of the road," that "[t]he statutory regime makes clear that [the

Nor does the fact that both section 10(d) and section 271(d)(3) use the phrase "fully implemented" mean that Congress intended for that phrase to have the same meaning in both provisions. As the District of Columbia Circuit has noted, "[o]n numerous occasions, both the Supreme Court and this court have determined, after examining statutory structure, context and legislative history, that identical words within a single act have different meanings."[60] In this case, the same two words appear in different Titles of the Act in provisions that have very different purposes.[61]

As MCI previously has shown,[62] the most reasonable construction of the "fully implemented" requirement in section 10(d) is that it is satisfied "when markets are deemed competitive."[63] Specifically, the Commission should not consider section 10(d) satisfied until it can conclude that in a relevant geographic area, a robust wholesale market exists that enables competing providers to obtain access to the

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BOC] must continue to satisfy the 'conditions required for . . . approval' after it begins competing for long distance business," and discussing "Congress's recognition that a BOC's incentives to cooperate with its local service competitors may diminish . . . once the BOC obtains section 271 approval").

60 *Martini v. Federal National Mortgage Ass'n*, 178 F.3d 1336, 1343 (D.C. Cir. 1999); *see also Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932) (presumption that identical words in an act have the same meaning "is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent").

61 Cases in which courts have assigned the same meaning to a word or phrase appearing more than once in a statute typically involve very different circumstances from those presented here. *See, e.g., Sorenson v. Secretary of the Treasury*, 475 U.S. 851 (1986) (concluding that the term "overpayment," which (1) appeared in different subsections of the same statutory provision, (2) was explicitly defined in the same subchapter in which those subsections appeared, and (3) concerned the same subject matter, namely, treatment of overpayments, should be given the same meaning).

62 *See* Opposition of MCI, WC Docket No. 03-157, at 27-28 (Aug. 18, 2003).

63 141 Cong. Rec. S. 7942, 7956 (June 8, 1995) (statement of Senator McCain) (quoting from Heritage Foundation letter).

telecommunications services and facilities they require to enter the market without the need for continued enforcement of sections 251(c) or 271. Stated differently, the "fully implemented" standard requires a showing that a BOC no longer is dominant in the provision of the network elements and telecommunications services that entrants require to enter and compete effectively with the BOC.[64]

The fact that section 10(d) applies to both section 251(c) and section 271 reinforces this reading of "fully implemented." Both provisions focus on opening local telecommunications markets to entry through interconnection with an incumbent LEC, lease of unbundled network elements, or resale of retail services, or some combination thereof. In view of the paramount importance that Congress assigned to fostering the development of competitive local markets, the most reasonable reading of section 10(d) is to require the Commission to find that a robust wholesale market for facilities and services exists in a relevant geographic area so that it is assured that forbearing from enforcing the requirements of section 251(c) or section 271 will not lead promptly to the remonopolization of local and long distance services.

Section 10(d) bars the Commission from forbearing from applying the requirements of section 271 until those requirements have been "fully implemented."[65] Verizon's Petition must therefore be denied.

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64 *See, e.g.,* Z-Tel Reply Comments, CC Docket No. 01-338, at 118-23 (July 17, 2002) (citing *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1995)).

65 47 U.S.C. § 160(d).

B. Verizon's Argument that Section 271 Does Not Apply to "Broadband" Loops and Packet Switching Is Without Merit

Verizon argues that relief from its unbundling requirements is appropriate because Congress intended for section 271 to apply only to the BOCs' "historical legacy voice networks," and not to their investments in broadband technology.[66] Verizon further claims that the FCC has construed checklist items 4 and 6 "not to require the unbundling of broadband loop or switching elements excluded from the section 251 unbundling list."[67] As explained below, Verizon is wrong on both counts. The plain language of section 271, the legislative history of the 1996 Act, and relevant FCC and federal court precedents demonstrate that Congress intended for section 271 to apply to all BOC interLATA services, narrowband and broadband alike. Likewise, the plain language of checklist items 4 and 6, as well as relevant FCC precedents (including those cited by Verizon), confirm that checklist items 4 and 6 impose an independent obligation on the BOCs to provide access to loops and switching, and that such obligation is separate and distinct from the section 251 unbundling obligations of incumbent LECs.

1. Section 271 Is Not Limited to "Legacy" Voice Networks

Verizon erroneously suggests that section 271 was designed to apply only "to 'core' *legacy* elements" of the BOCs' voice network, and not to the purportedly "*new* elements that are used in the provision of the *broadband* services at issue here."[68] In fact, section 271 applies to all "interLATA services," which the Act defines to include "telecommunications between a point located in a local access and transport area and a

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66 Petition at 4.

67 *Id.*

68 *Id.* at 18; *see also id.* at 14.

point located outside such area."[69] Nothing in the Act suggests that broadband is not included within that definition. Indeed, the FCC has previously confirmed that section 271 extends to all interLATA services, including voice, data, and broadband.[70]

Verizon is also incorrect in suggesting that broadband services were "new" when the 1996 Act was debated and enacted. In fact, broadband technologies date back to the 1950s, and fiber optic and digital technologies in particular began to be widely deployed after the AT&T divestiture in 1984.[71] Moreover, Congress was aware that broadband services existed in 1996 – a fact that is irrefutably proven by section 706, which expressly seeks to promote the timely deployment of "advanced telecommunications capability" – defined in section 706 as "high-speed, switched, *broadband* telecommunications capability."[72] Given that broadband existed in 1996 and was known to Congress at that

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69 47 U.S.C. § 271(b); *id.* § 153(21).

70 *See, e.g., Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, 13 FCC Rcd 24011, ¶¶ 18, 35 (1998) ("*Advanced Services Order*") (denying BOCs' request to establish a "data LATA" because doing so "would be functionally the same as forbearing from section 271 for advanced services and would eviscerate section 271 for those services"; further "conclud[ing] that advanced services are telecommunications services. The Commission has repeatedly held that specific packet-switched services are 'basic services,' that is to say, pure transmission services."). As Verizon notes, the *UNE Triennial Review Order* discusses the relationship between sections 251 and 271, but does not mention broadband. Petition at 7. In fact, there was no need for the Commission to mention broadband because it is abundantly clear that broadband is to be treated no differently than any other service or element under section 271.

71 *See, e.g.*, Anthony Palazzo, "History of the Broadband Industry," *available at*: <http://www.broadband-internet.org/history.htm> (viewed Nov. 17, 2003); "Broadband, History, Use, Diffusion, and Deployment," *available at*: <http://www.actonvision.com/broadband/Broadband_History_Use_Diffusion_Deployment.htm> (viewed Nov. 17, 2003).

72 47 U.S.C. § 157 Note, History, Ancillary Laws and Directives (emphasis added); *see also* Statement of Sen. Hollings, 145 Cong. Rec. S. 8085, 8086 (1999) (the BOCs "are wrong" when they argue that Congress did not contemplate the provision of advanced services when it enacted the competitive checklist); *Advanced Services Order* ¶

time, Congress easily could have drafted section 271 to indicate that its provisions did not apply to broadband services. Congress chose not to do so for the simple reason that it intended section 271 to apply broadly to all interLATA services – narrowband and broadband alike.

Indeed, nothing in the legislative history of the 1996 Act suggests that Congress intended the competitive checklist to apply only to voice elements, and not to broadband elements. To the contrary, Congress intended key provisions of the 1996 Act not to be limited to traditional voice telephony, and "not [to be] made useless by the replacement of circuit switched technology with other means – for example packet switches or computer intranets."[73]

Verizon's interpretation of section 271 is also contrary to the Commission's finding in the *Advanced Services Order* that the procompetitive provisions of the 1996 Act – above all, sections 251(c) and 271 – "apply equally to advanced services and to circuit-switched voice services."[74] As the Commission explained, "in adopting the 1996 Act, Congress consciously did not try to pick winners or losers, or favor one technology

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49 ("Congress was well aware of the Internet and packet-switched services in 1996, and the statutory terms do not include any exemption for those services."); *id.* ¶ 49 n.83 ("Congress in the 1996 Act favored 'the continued development of the Internet,' which the Act defined as 'the international computer network of . . . interoperable packet-switched data services.'") (citing 47 U.S.C. § 230(b)(1), (e)(1) and 47 U.S.C. § 223).

[73] Comments of Senators Stevens and Burns, *Federal-State Board on Universal Service*, CC Docket No. 96-45, Report to Congress (Jan. 28, 1998) at 2 n.1 (discussing Congress's expansion of the scope of "telephone exchange service" in the 1996 Act); *see also Advanced Services Order* ¶ 49 ("Nothing in the statute or legislative history indicates that [section 251(c)] was intended to apply only to existing technology.").

[74] *Advanced Services Order* ¶¶ 11-12 (denying petitions to forbear from applying the requirements of sections 251(c) and 271 to the provision of advanced services); *see also id.* ¶ 21 ("At the core of the Act's market-opening provisions are sections 251 and 271."); *id.* ¶ 73 ("Sections 251(c) and 271 are cornerstones of the framework Congress established in the 1996 Act to open local markets to competition.").

over another."[75] Rather, "Congress made clear that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets."[76] As these findings demonstrate, Congress did not intend to exempt advanced services from the competitive checklist of section 271; rather, Congress intended that the facilities used to provide advanced services, like the facilities used to provide voice services, would be treated as network elements that are subject both to the unbundling requirements of section 251(c) and the competitive checklist requirements of section 271.[77]

Finally, Verizon's reliance on *BellSouth v. FCC* is misplaced.[78] In that case, the U.S. Court of Appeals for the D.C. Circuit found that section 271 required the BOCs "to open their local markets to competition before allowing them to enter the long distance services market in-region, because, due to the unique infrastructure controlled by the BOCs, they could exercise monopoly power."[79] Verizon claims that "[s]uch market-leveraging concerns" do not arise with respect to elements used in the provision of broadband services because the BOCs "are not remotely dominant in the market for those services."[80] In fact, nothing in the court's opinion remotely suggests that the competitive checklist was intended to apply only to network elements used for voice services.

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75 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15435, ¶ 7 (2001) (citing *Advanced Services Order* ¶¶ 2, 11).

76 *Advanced Services Order* ¶ 11; *see also Association of Communications Enterprises v. FCC*, 235 F.3d 662, 664 (D.C. Cir. 2001) (citing earlier FCC determinations "that advanced services are telecommunications services like any others").

77 *Advanced Services Order* ¶ 11 (finding that "the facilities and equipment used by incumbent LECs to provide advanced services are network elements"); *see also id.* ¶ 57.

78 Petition at 18.

79 *BellSouth Corp. v. FCC*, 162 F.3d at 689-90.

80 Petition at 18.

Moreover, contrary to Verizon's claim, the BOCs continue to possess market power with respect to the underlying transmission facilities, regardless of whether those bottleneck facilities are used to provide narrowband or broadband services, or both.

There is therefore neither a legal nor a factual basis for the Commission to interpret section 271 as applying only to the "legacy" voice elements of the BOCs' networks.

2. The Section 271 Checklist Requires Verizon to Provide Independent Access to Fiber and Hybrid Loops, Including All Their Features, Functions, and Capabilities

Verizon incorrectly claims that the section 271 checklist has been interpreted not to cover broadband loop or packet switching elements that have been excluded from the section 251 unbundling list.[81] Verizon's argument, however, omits any discussion of statutory language. As explained below, the plain language of section 271 makes clear that the checklist applies broadly to all types of loops and switching, including facilities used to provide broadband services.[82] Moreover, even the precedents cited by Verizon confirm that the FCC has found that section 271 requires BOCs to provide access to broadband facilities under checklist items 4-6, independent of any unbundling analysis under section 251(c)(3).

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[81] *Id.* at 4. Although Verizon refers to "checklist items 4-6," *id.* at 15, Verizon does not request relief with respect to checklist item 5. MCI therefore does not separately discuss checklist item 5.

[82] 47 U.S.C. § 271(c)(2)(B)(iv), (vi).

a. *The Plain Language of the Section 271 Checklist Covers Broadband Facilities*

In drafting the requirements of the section 271 checklist, Congress chose to use language that applies broadly to all types of loops and switching. There is no suggestion that Congress intended to exempt facilities used to provide broadband services.

Checklist item 4, for instance, requires the BOCs to provide access to "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[83] This definition clearly encompasses fiber and hybrid fiber-copper loops, both of which are means of transmission from the central office to the customer's premises. Moreover, to the extent that packet-based features, functions, and capabilities exist between the central office and the customer's premises (*e.g.*, in the remote terminal), the FCC has treated them as features, functions, and capabilities of the loop for purposes of the competitive checklist.[84]

This analysis is consistent with the *UNE Triennial Review Order*, which distinguished between (i) packet-based features, functions, and capabilities located between the central office and the customer's premises (such as packet switching functionalities used in DLC loop architecture), and (ii) packet switches (such as routers and DSLAMs) located in the central office. The Commission addressed the former category within its discussion of loops, while the latter category was addressed in the discussion of packet switches.[85]

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83 *Id.* § 271(c)(2)(B)(iv).

84 For instance, where DSL-capable fiber-fed NGDLCs are deployed in a BOC's network, packet switching is a functionality of the local loop for purposes of checklist item 4. *See* MCI Reply Comments at 112.

85 *Compare UNE Triennial Review Order* ¶¶ 285-97, *with id.* ¶¶ 537-41 & n.1646; *see also* 47 C.F.R. § 51.319(a) (defining local loop as "a transmission facility between a

b. The Precedents Cited by Verizon Are Inapposite

Verizon incorrectly claims that both the federal courts and the FCC have recognized that the 271 checklist items do not encompass facilities used to provide broadband services.[86] In fact, the case law cited by Verizon is consistent with the FCC's conclusion that access to 271 checklist items, including facilities used to provide broadband services, is independent of any unbundling duties imposed by section 251.[87]

Checklist Item 4. Verizon argues that in *AT&T v. FCC*, the U.S. Court of Appeals for the D.C. Circuit concluded that a BOC need not provide access to DSL loops under checklist item 4.[88] According to Verizon, this confirms that "[c]hecklist item 4 has never been understood . . . to require a Bell company to provide CLECs with . . . every facility in its network that could qualify as a 'loop.'"[89] In fact, that is precisely what checklist item 4 requires, and the court's decision in *AT&T v. FCC* is not to the contrary. In that case, the court permitted the FCC to determine compliance with checklist item 4 by

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distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises . . . includ[ing] all features, functions, and capabilities of such transmission facilities").

86 Petition at 16-17.

87 There is no legal relevance to Verizon's claim that in several section 271 orders, the Commission noted a BOC's compliance with the rules adopted in the *UNE Remand Order* in finding that a checklist item had been satisfied. Petition at 16. Verizon fails to point out that in the *UNE Remand Order* (as in the *UNE Triennial Review Order*), the Commission found that section 271 imposes an independent unbundling obligation on the BOCs that is separate from the obligations of section 251. *See UNE Remand Order* ¶ 471. It thus would not make sense to interpret the Commission's citation of the *UNE Remand Order* as evidence that the FCC had decided to invalidate a key finding of that order.

88 *AT&T Corp. v. FCC*, 220 F.3d 607, 624 (D.C. Cir. 2000).

89 Petition at 16.

"assess[ing] an applicant's overall provisioning of loops."[90] This "overall provisioning" standard did not allow the BOC to refuse to provide a certain type of loop (such as DSL-capable loops), but rather allowed the FCC to consider the BOC's provisioning data for *all* loop categories (including DSL-capable loops) when assessing checklist compliance.[91]

Verizon also cites the *Texas 271 Order* and the *New York 271 Order* for the proposition that the substance of checklist item 4 is tied to unbundling obligations implemented by the FCC pursuant to section 251.[92] The cited portions of those orders, however, relate solely to checklist item 2, which expressly incorporates the requirements of section 251, and not to checklist item 4, which is assessed independently of section 251.

Checklist Item 6. The precedents cited by Verizon with respect to checklist item 6 are also inapposite. In particular, Verizon argues that the Commission's refusal in the *Texas 271 Order* to provide competitors with access to splitters confirms that checklist item 6 does not include packet switches.[93] In fact, the FCC refused to mandate access to splitters because it had not yet determined whether the splitter was to be defined as part

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90 *AT&T v. FCC*, 220 F.3d at 624.

91 Checklist item 4 often entails numerous different loop types (2-wire, 4-wire, BRI, DSL, fiber, etc.). Although the BOC may have provided discriminatory access to a single type of loop, the *AT&T* decision effectively allowed the FCC to find compliance with the overall checklist item, absent evidence of systematic problems. *See also Application by SBC Communications, Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Illinois, et al.*, Memorandum Opinion and Order, 18 FCC Rcd 21543, ¶ 142 (2003) (checklist item 4 requires FCC to conduct "review of SBC's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, and high-capacity loops").

92 Petition at 16 n.4 (citing *Texas 271 Order* ¶¶ 28-33; *New York 271 Order* ¶ 236 & n.756).

93 Petition at 16-17.

of *any* network element.[94] It was because of this unresolved definitional issue – and not the Commission's section 251 analysis – that the FCC declined to require SWBT to provide access to splitters under section 271.[95]

Verizon also relies on the *Qwest Nine-State Order* to support its argument that the FCC has construed the checklist not to include elements used to provide broadband elements.[96] There, AT&T argued that Qwest was not offering nondiscriminatory access to packet switching under the four-prong packet-switching rule adopted in the *UNE Remand Order*.[97] In response, the FCC found it sufficient that Qwest offered competitors access to packet switching at an unspecified bit rate pursuant to section 251(c), and at other types of bit rates pursuant to Qwest's *bona fide* request process.[98] AT&T's comments never raised the issue of whether Qwest was meeting its independent

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94 Although the Commission had determined at the time that the DSLAM was a component of the packet switching element, it had not determined whether the splitter was part of that element. *Texas 271 Order* ¶ 328 (noting that in the *UNE Remand Order*, the Commission had only "*suggested* that the splitter, because it is often part of the DSLAM, *might* properly be considered part of that element as a general matter") (emphasis added). Because this definitional issue was pending before the FCC, the Commission did not consider whether SWBT had an obligation under checklist item 6 to provide access to the splitter. *See Texas 271 Order* ¶¶ 336-42.

95 *Id.* ¶ 328.

96 Petition at 17 & n.5.

97 *See Qwest Nine-State Order* ¶ 358.

98 *Id.* The FCC also ruled that Qwest had satisfied checklist item 6 based on the fact that it made available (at market-based rates) density zone 1 switching with four or more lines. If Verizon were correct that the requirements of section 271 are "derivative" of section 251, Qwest would not have been required to provide access to unbundled zone 1 switching. *See id.* ¶ 359 (citing Colorado SGAT, Ninth Revision, § 9.11.2.5 (March 4, 2003); Utah SGAT, Seventh Revision, § 9.11.2.5 (Oct. 31, 2002); Washington SGAT, Eighth Revision § 9.11.2.5 (June 25, 2002)); *available at*: <http://www.qwest.com/about/policy/sgats>.

obligation to provide packet switching under section 271,[99] and the FCC therefore did not reach that issue.[100]

In sum, there is no basis for Verizon's claim that section 271 does not apply to facilities used to provide broadband services. Indeed, the plain language of checklist items 4 and 6 and past federal and Commission precedent make clear that section 271 requires unbundled access to facilities used to provide both narrowband and broadband services.

III. CONCLUSION

For the foregoing reasons, MCI urges the Commission to deny the relief requested by Verizon in its Petition.

Respectfully submitted,

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November 17, 2003

99 *See* AT&T Comments, WC Docket No. 02-189, at 112-114 (Aug. 1, 2002).

100 The FCC's decision in the *Arkansas/Missouri 271 Order* also addressed the BOC's duty to provide packet switching under section 251, not its independent obligation under section 271. *See Arkansas/Missouri 271 Order* ¶ 105 n.323 (citing the Fifth Further NPRM in CC Docket 96-98, 15 FCC Rcd 17806 (2000) and AT&T Comments in WC Docket No. 01-194, Finney Declaration at 25-31). Accordingly, Verizon's reliance on that order is similarly misplaced. Petition at 17 n.5.

Certificate of Service

I, Ruth E. Holder, certify that on this 17th day of November, 2003, I caused true and correct copies of the foregoing Opposition of MCI to Verizon's Petition for Forbearance to be mailed to:

Janice M. Myles (two copies)
Federal Communications Commission
Wireline Competition Bureau
Competition Policy Division
445 12th Street SW, Suite 5-C327
Washington, DC 20554
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Portals II
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Susanne A. Guyer
Senior Vice President
Regulatory Affairs
Verizon
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Washington, DC 20005
(via first class U.S. mail)

/s/ Ruth E. Holder
Ruth E. Holder

Attachment 1

Packet at the Remote Terminal Service (PARTS)
Presentation to NY DSL Collaborative
8/28/02

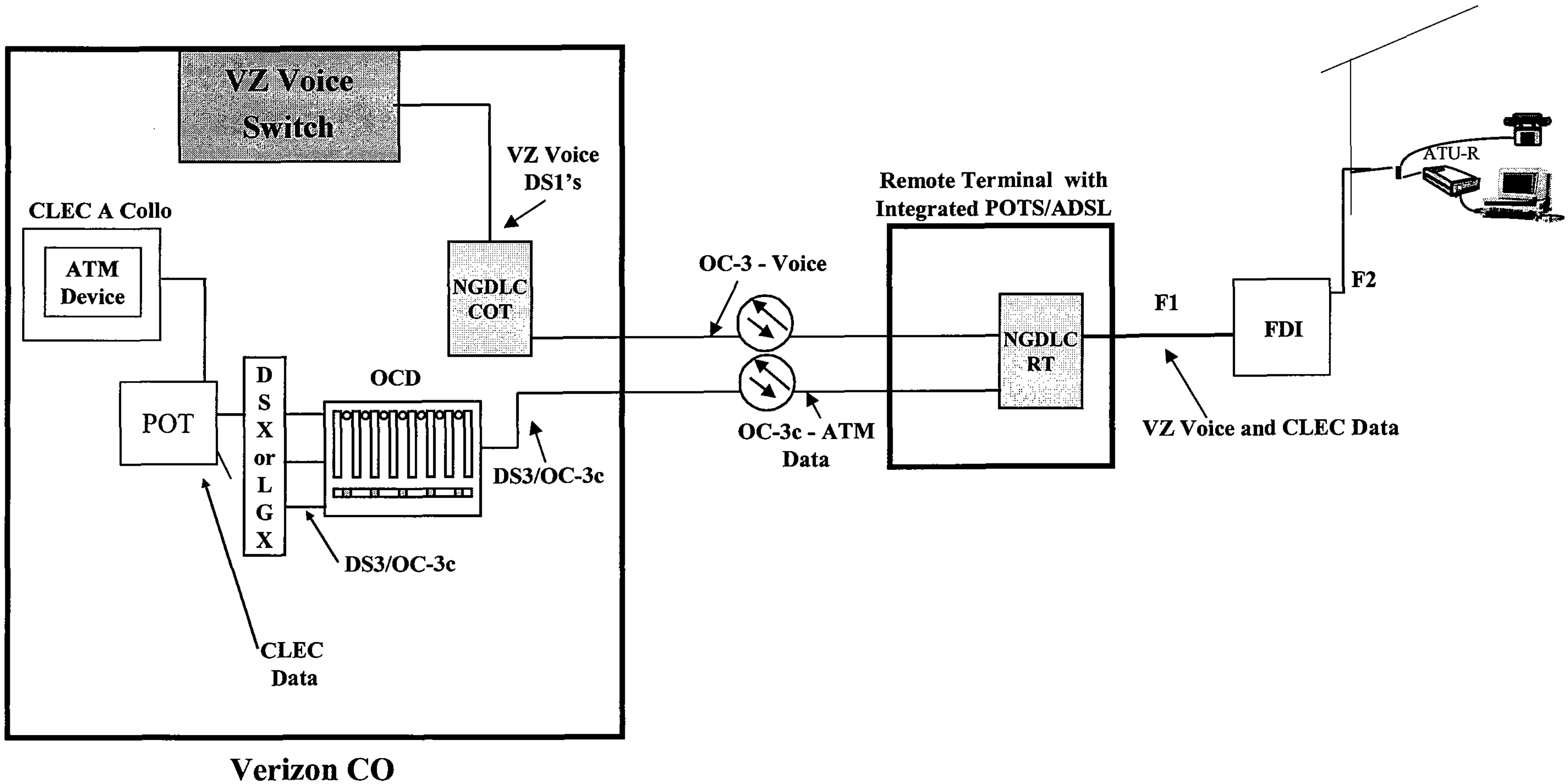
PARTS FCC Tariff Filing

- Filed 8/9 for effect 8/24
  - Section 17.4 of the FCC No. 11 Tariff (former NYNEX serving area)
  - Section 16.9 of the FCC. No. 1 Tariff (original BA serving area)
  - Will be filed in fGTE tariffs upon deployment of service to these areas.
- Effective date now planned for 9/4.

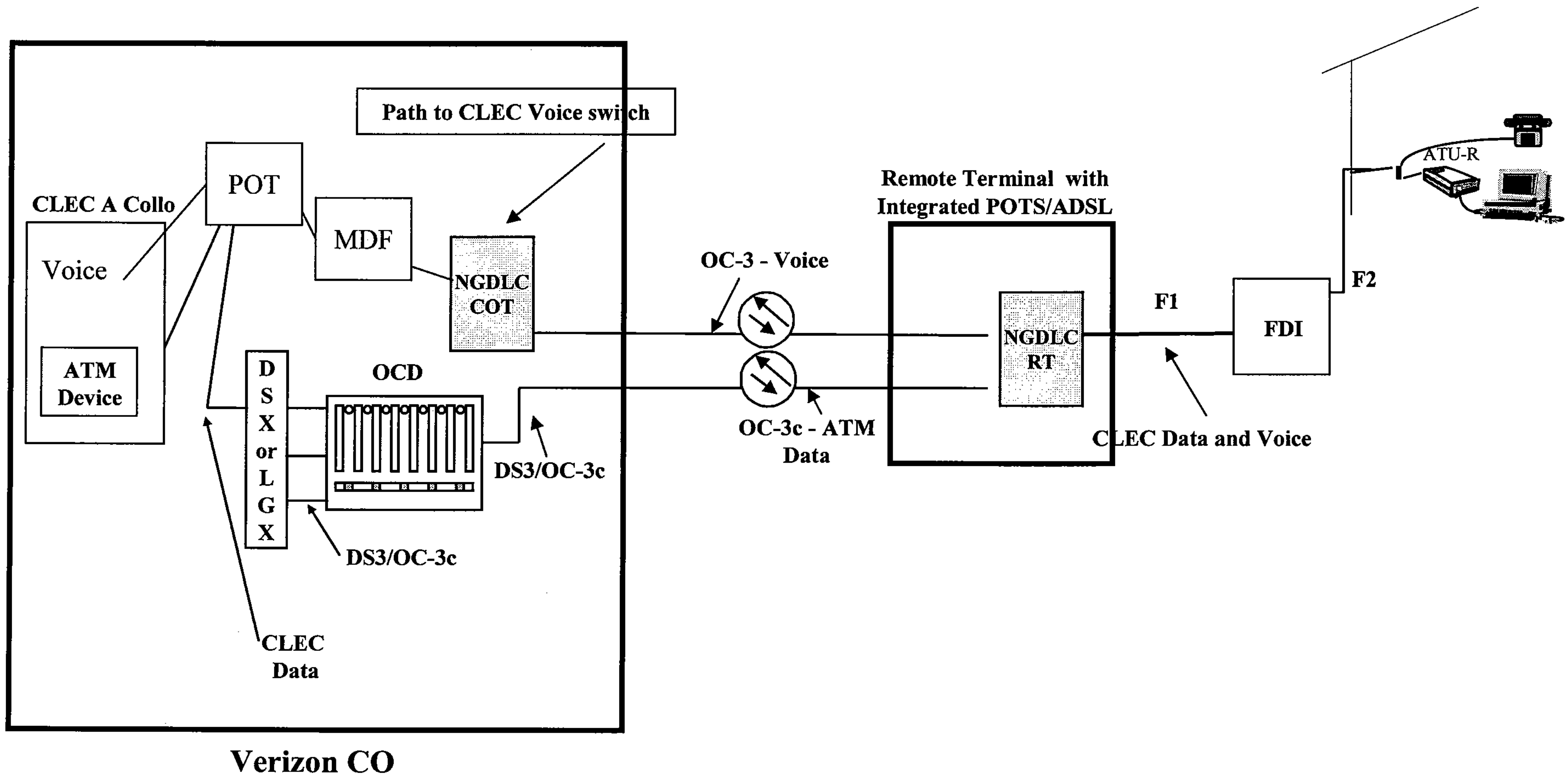
Service Features

- PARTS is an access service that provides a virtual data channel between the end user's rate demarcation point and a Customer's collocation arrangement located in the end user's serving wire center.
- PARTS is based on Digital Subscriber Line (DSL) technology and is only available in those locations where the end user is served by a remote terminal and that remote terminal (and associated serving wire center) has been equipped with a DSL (I.e., packet) switching and transport capability.
  - ADSL technology using a "Unspecified Bit Rate" UBR Quality of Service (QoS).
  - One PVC per end user.
  - Four paired down/up maximum transmission rates: 768/128; 1.5/128; 1.5/384; 384/384.
- Three configurations:
  - Data signal delivered to end user over same pair that delivers VZ retail voice service.
  - Data signal delivered to end user over same pair that delivers a 2W UNE VG signal where a CLEC provides dial tone.
  - Standalone DATA.

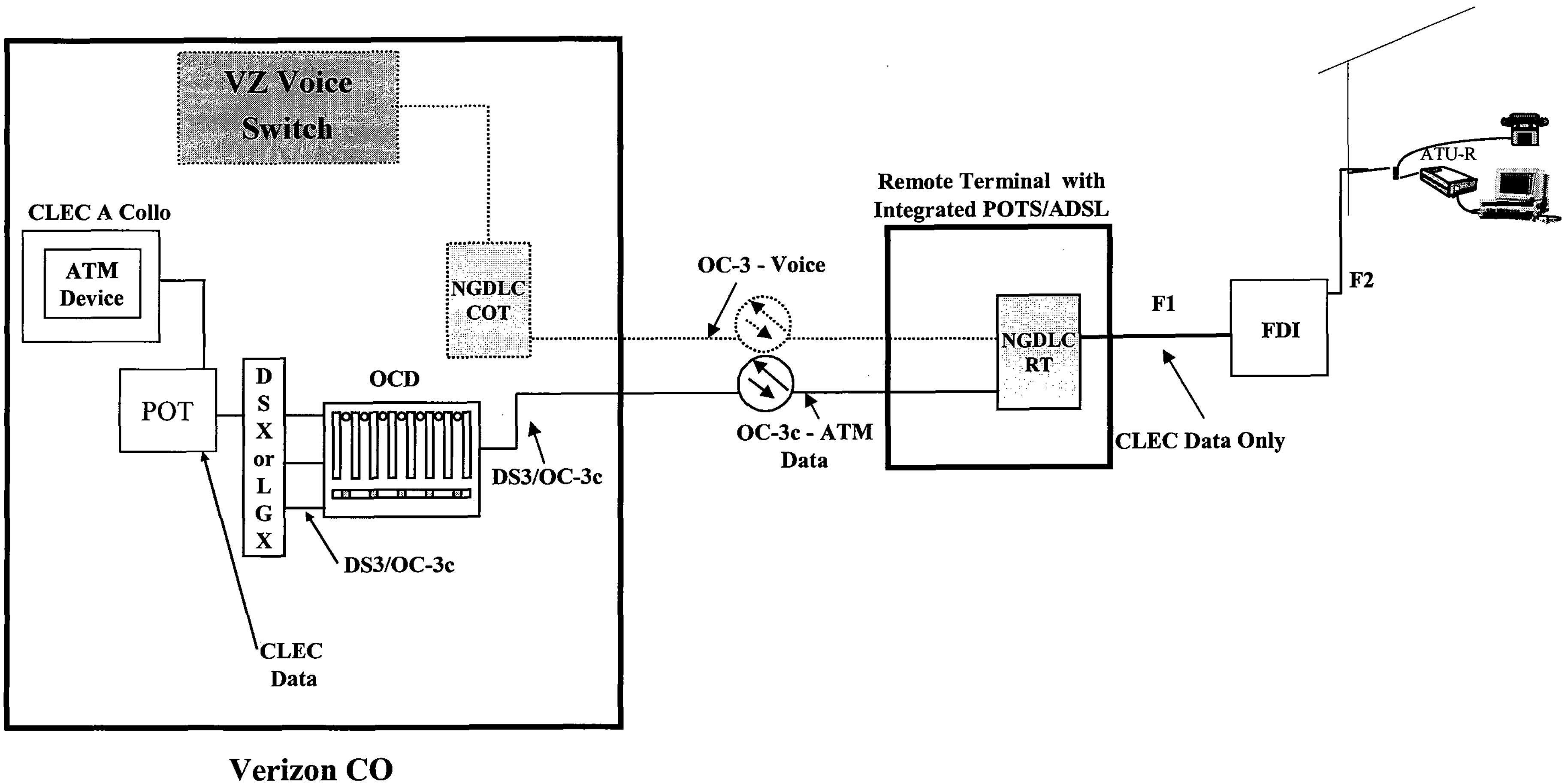
PARTS delivered with VZ retail voice service



PARTS delivered over a 2W UNE loop



PARTS: Data Only



Ordering

- Two orders must be submitted and processed to establish data connectivity between the End User and Customer collo arrangement.
- ATM Port Order
  - Creates connection between the OCD (ATM switch) in the SWC and the Customer's collo arrangement.
  - DS3 or OC-3c transmission rate.
  - Submitted via ASR to the CATC
- PVC Order
  - Creates logical PVC between end user and Customer
  - Specifies VPI/VCI of end user modem and max transmission rate
  - Submitted via LSR to the NMC

Notification and Loop Qualification

- Disclosures and Ordering Rules:
  - Network Disclosure posted in February.
  - PVC ordering rules posted in May.
  - OCD Port ordering rules posted in July
- 90 days prior to earliest possible deployment date, Vz has been identifying to CLECs (via e-mail) the RTs where PARTS is scheduled for deployment.
  - VZ has released four mailings (2/20, 5/21, 6/18, 8/14) announcing the planned deployment of 350 RTs (31 in NY) subtending 160 Central Offices (22 in NY).
- Upon turn-up of the RT, Livewire will be updated so that addresses/TNs equipped with PARTS will return a PARTS indication.

Rate Structure and Rates

- Rate Structure
  - ATM Port: Monthly Recurring and Non-recurring by transmission rate
  - PVC: Monthly Recurring and Non-recurring by max transmission rate
  - Line charge: monthly recurring

	ATM Ports	
DS-3	$150.00	$ 880.00
OC-3c	425.00	880.00
(B)	PVC	
768Kbps/128Kbps	21.00	260.00
1.5Mbps/128Kbps	25.00	260.00
1.5Mbps/384Kbps	27.00	260.00
384kbps/384Kbps	20.00	260.00
PARTS Line		
Service Configuration 1	#	#
Service Configuration 2	*	*
Service Configuration 3	$32.00	None